



## ASSOCIATION OF PROFESSIONAL DISABLED SERVICE EMPLOYEES

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**Jeff Michaelson Executive Board President/ Chief Labor Negotiator /LM-1 File # 000413**

Submitted 08/30/17 Electronically Through the National Labor Relations Board On-Line System & via USPS upon Counsel for the Employer, and Employer, the Westside Center for Independent Living

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

**ATTENTION:** The Honorable Associate Chief Administrative Law Judge  
SAN FRANCISCO BRANCH OFFICE

**RE:** The Association's 08/29/17 Statement asserting that there is sufficient cause to Support  
The Collective Bargaining Agents opposition to the 2<sup>ND</sup> postponement of hearing/trial before an  
Administrative Law Judge of the National Labor Relations Board in the matter of 31-CA-15811

Dear The Honorable Associate Chief Administrative Law Judge:

The Association of Professional Disabled Service Employees ("Association") statement of cause submitted to all interested parties on August 29, 2017 for the purpose of opposing the postponement of the second trial before an Administrative Law Judge of National Labor Relations Board charging the Westside Center for Independent Living ("WCIL") with (45) forty five separate Unfair Labor Practice Charges perpetrated against the Collective Bargaining Agent during first contract negotiations between the Association and WCIL in the matter of 31-CA-15811. The Association asserts postponement of the 2<sup>nd</sup> hearing in this matter scheduled is clearly and unequivocally repugnant to the objectives of the National Labor Relations Act ("NLRA") because of the sheer quantity of ULP's charges filed against the Employer by Region 31 of National Labor Relations Board ("the Region") and the egregious nature of the ULP Charges asserted.

### A. Introduction

(4) Four matters with respect to the (1) The substantial and uniquely detrimental prejudice caused by any delay or postponement of the setting of a hearing/trial for purposes of adjudication of ULP's that arise in a first contract negotiation. (2) Secondly, delay or postponement of the adjudication of the 45 ULP charges has emboldened WCIL to **precipitously** increase the egregious conduct prohibited by labor law because the deterring effect that the consequences of ULP violations were intended to have upon (this Employer) an employer's willingness [or labor organization] to continue to violate the Act **have been averted for almost two and half years (approximately 29 months)**. WCIL has not been penalized in any manner for two and half years since certified by Region 31 as the Collective Bargaining Agent on March 13, 2015. (4) Postponement of hearing/trial that was intended and designated as expedited is so delayed that the bargaining unit members are not willing to engage in protected concerted activity because in spite of 45 ULP Charges being issued it has been seventeen months since the two primary Officers of the Association were terminated for engaging in protected concerted and Union as authorized by Region 31 without any relief or due process. With this said any

further postponement of this hearing/trial in the above captioned matter has and shall continue to have a very dramatic chilling effect upon the willingness of employees to assert their rights with respect to collective bargaining and or protected concerted activity. On the other hand, WCIL has been emboldened and empowered because same has engaged in Unfair Labor Practices completely shielded from any legal consequence in accordance with the Act for approximately 29 months. To this end, the employer has exponentially increased the egregious nature of the ULP conduct while almost completely eviscerating the authority and capability of the Collective Bargaining Agent to enforce rights under the Act. With this said the Association is perceived by many of its member and the general public as completely ineffective with respect to capacity to enforce the remedies enumerated in accordance and pursuant to the Act even after (45) merit charges were issued by Region 31 and served upon WCIL.

The undersigned on behalf of the Association of Professional Disabled Service Employee's ("the Association") cannot overstate the above objection in any stronger terms, than to characterize Mr. Howard Knee's Esq. [Counsel for WCIL that was a party to many of the collective bargaining sessions between the Association and the Westside Center for Independent Living ("the Employer")] assertion as provided in his declaration in support of the SECOND postponement of the trial in the above captioned case upon ("45") forty-five Unfair Labor Practices authorized for complaint by Region 31 at point (4) four of counsel's declaration as a clear and intentional misstatement of material fact intended to frustrate the Collective Bargaining Agent's right to redress of the Employer's numerous ULP violations perpetrated upon the Association during these first contract negotiations before an Administrative Law Judge of the National Labor Relations Board. . . . T, this time through an intentional misstatement of material fact that is arguably the central purpose and objective of the National Labor Relations Act ("NLRA") being the reaching of a collective bargaining agreement through good faith by both the Collective Bargaining Agent and Employer.

To be clear and in no uncertain terms, the Association did NOT, emphasis added, reach an agreement upon all terms and conditions of employment as reflected in the tentative agreements that had been signed by the bargaining representatives for the Collective Bargaining Agent and Employer. The above statement asserted by Mr. Knee Esq. is simply NOT true and has been fabricated to create the false impression that the Employer is willing and genuinely interested in reaching an agreement as means of diverting any attention upon the egregious and numerous (45) Unfair Labor Practices ("ULP") charges filed by Region 31 of the National Labor Relations Board ("NLRB") any focus upon Unfair Labor Practice perpetrated against the Collective Bargaining Agent when the Association was and is at its weakest point strategically and with respect to support because a first contract has not been reached.

The Attorney's employed by Gordon and Rees including (1) Mr. Joe Buttone, (2) Mr. Jim McMullen Esq. and (3) Mr. Justin Mitchsch were NOT, emphasis added, at ANY collective bargaining sessions held between the Association and WCIL including the August 18, 2017 Collective Bargaining Session and having no knowledge of the negotiations that occurred on August 18, 2017 cannot accurately or properly assert that the Collective Bargaining Agent and Employer reached agreement on ALL terms and conditions of employment as reflected in the draft collective bargaining agreement. Before asserting that agreement had been reached on ALL, emphasis added, terms and conditions of employment the above captioned attorney's should have verified the truth of this most critically germane statement. None of the above captioned attorney's called; emailed, faxed, or made any, emphasis added, attempt to verify the truth of the critical statement that agreements had been reached on all matter, terms and conditions of employment.

It is most unfortunate and disheartening that the above captioned attorneys would assert that a fact of such critical importance such as reaching agreement upon a collective bargaining agreement for a first contract with the Association as unequivocally and clearly provided in the

[may have been ethically obligated under professional rules of conduct governing the practice of law as provided in California Business and Professions Code, the undersigned has not had sufficient time to research any statute that might confer an obligation to verify and corroborate a statement of material fact that same could not know without confirming the statement, especially when the misstatement of material fact is the gravamen of the charge and of central and critical importance to the motion filed in support of postponing the trial before the National Labor Relations Board for the SECOND time (the first trial was set for July 24, 2017 and Employer's Counsel moved to continue the trial successfully, delaying the due process rights of the collective bargaining agent with respect to (45) forty-five Unfair Labor Practice Charges that include and are not limited to (5) terminations of bargaining unit members that included the Executive President of the Association and Chief Negotiator thereof that the Region authorized for complaint approximately one year ago, bad faith bargaining with respect to first contract negotiations by engaging in (a) regressive bargaining (b) making unreasonable demands, (c) being reluctant to meet more frequently and (d) for longer durations of time, (e) and engaging in other unlawful conduct away from the bargaining table. Other unlawful bargaining conduct that the region authorized for complaint includes but is not limited to several unilateral changes to terms and conditions of employment, direct dealing, and failure and refusal to furnish critical information necessary for collective bargaining.

**The Association of Professional Disabled Service Employees ("Association") statement of cause submitted to all interested parties on August 29, 2017 for the purpose of opposing the postponement of the second trial before an Administrative Law Judge of National Labor Relations Board charging the Westside Center for Independent Living ("WCIL") with (45) forty five separate Unfair Labor Practice Charges perpetrated against the Collective Bargaining Agent during first contract negotiations between the Association and WCIL in the matter of 31-CA-15811**

**THE ABOVE COLLECTIVE BARGAINING AGENT IS PROVIDING OFFICIAL NOTICE TO ALL INTERESTED PARTIES AS IDENTIFIED WITH THIS CERTIFICATE OF SERVICE ATTACHED HERETO THAT Mr. HOWARD KNEE ASSERTED A MISTATEMENT of MATERIAL FACT WITH RESPECT TO THE CLAIM THAT THE ASSOCIATION AND WCIL REACHED AGREEMENT ON ALL TERMS AND CONDITIONS OF EMPLOYMENT PROVIDED IN THE COLLECTIVE BARGAINING AGREEMENT AS SAME APPEARS AT POINT #4 OF COUNSEL'S DECLARATION TO SUPPORT THIS SECOND REQUEST FOR POSPONMENT OF A TRAIL BEFORE THE NATIONAL LABOR RELATIONS BOARD THAT WAS ORIGINALLY DESIGNATED AND FILED AS AN EXPEDIATED TRIAL BY THE REGION SET FOR JULY 24, 2017, (please see the notice of hearing attached to Region 31 Complaint served upon the Employer on May 31, 2017)**

The undersigned on behalf of the Association of Professional Disabled Service Employee's ("the Association") cannot overstate the above objection in any stronger terms, than to characterize Mr. Howard Knee's Esq. [Counsel for WCIL that was a party to many of the collective bargaining sessions between the Association and the Westside Center for Independent Living ("the Employer")] assertion as provided in his declaration in support of the SECOND postponement of the trial in the above captioned case upon ("45") forty-five Unfair Labor Practices authorized for complaint by Region 31 at point (4) four of counsel's declaration as a clear and intentional misstatement of material fact intended to frustrate the Collective Bargaining Agent's right to redress of the Employer's numerous ULP violations perpetrated upon the Association during these first contract negotiations before an Administrative Law Judge of the National Labor Relations Board. Justice delayed is justice denied, to this end, Employer's counsel is continuing the strategy of delay, this time through an intentional misstatement of material fact that is arguably the central purpose and objective of the National Labor Relations Act ("NLRA") being the reaching of a collective bargaining agreement through good faith by both the Collective Bargaining Agent and Employer.

To be clear and in no uncertain terms, the Association did NOT, emphasis added, reach an agreement upon all terms and conditions of employment as reflected in tentative agreements that had been signed by the bargaining representatives for the Collective Bargaining Agent and Employer. The above statement asserted by Mr. Knee Esq. is simply NOT true and has been fabricated to create the false impression that the Employer is willing and genuinely interested in reaching an agreement as means of diverting any attention upon the egregious and numerous (45) Unfair Labor Practices ("ULP") charges filed by Region 31 of the National Labor Relations Board ("NLRB") any focus upon Unfair Labor Practice perpetrated against the Collective Bargaining Agent when the Association was and is at its weakest point strategically and with respect to support because a first contract has not been reached.

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Please the below article with respect to the descriptive summary of delay in bargaining and the devastating effects upon the Labor Organization

**A delay in Bargaining and the effect upon the Collective BargainigAgents Support and ability to negotiate a contract**

A delay in bargaining weakens support for the union, and a Board order cannot remedy this diminished level of support. We recently agreed with the Seventh Circuit and concluded that “[a]s time passes, the benefits of unionization are lost and the spark to organize is extinguished. The deprivation to employees from the delay in bargaining and the diminution of union support is immeasurable.” Frankl, 650 F.3d at 1362–63 (quoting NLRB v. Electro–Voice, Inc., 83 F.3d 1559, 1573 (7th Cir.1996)); see also Machine Workers, 426 F.2d at 1249.17 As the NLRB held nearly seventy years ago:Employees join unions in order to secure collective bargaining. Whether or not the employer bargains with a union chosen by his employees is normally decisive of its ability to secure and retain its members. Consequently, the result of an unremedied refusal to bargain with a union, standing alone, is to discredit the organization in the eyes of the employees, to drive them to a second choice, or to persuade them to abandon collective bargaining altogether.Frankl, 650 F.3d at 1362 (quoting Karp Metal Prods. Co., 51 NLRB 621, 624 (1943)). Once the union's support has diminished, it will likely suffer irreparable harm because “[w]ith only limited support . the Union will be unable to bargain effectively regardless of the ultimate relief granted by the board.” Dunn, 241 F.3d at 667. - See more at: <http://caselaw.findlaw.com/us-9th-circuit/1593637.html#sthash.ssmlwjJO.dpuf>

Respectfully Submitted,  
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Jeff Michaelson  
Executive Board President/Chief Labor Negotiator  
Association of Professional Disabled Service Employees

C.c. Please refer to the certificate of Service that is attached hereto